STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1400

State of Minnesota,
Respondent,

vs.

Christopher Lamar Johnson,
Appellant.

Filed July 18, 2022
Affirmed
Worke, Judge

Stearns County District Court
File No. 73-CR-19-11007

Keith Ellison, Attorney General, Ed Stockmeyer, Assistant Attorney General, St. Paul, Minnesota; and

Janelle Kendall, Stearns County Attorney, St. Cloud, Minnesota (for respondent)

Joseph G. Vaccaro, The Law Office of Joseph G. Vaccaro, PLLC, St. Paul, Minnesota; and

Alex Kyes, Kyes Law, PLLC, St. Paul, Minnesota (for appellant)

Considered and decided by Frisch, Presiding Judge; Worke, Judge; and Reilly, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant argues that the evidence is insufficient to support his second-degree murder conviction. We affirm.

FACTS

In the early morning hours of December 29, 2019, appellant Christopher Lamar Johnson, his brother Lawrence Johnson,[1] and Bryant Stephenson arrived at a bar. Shortly after they arrived, a man bumped into Johnson's girlfriend. Johnson, Lawrence, and Stephenson attacked the man.

During the attack, the victim approached the fight and appeared to touch Johnson on the shoulder. Lawrence attacked the victim. The victim punched Lawrence, knocking him to the ground. Johnson then attempted to punch the victim, but the victim punched Johnson in the face before Johnson could strike him. Onlookers and bouncers broke up the fight; Johnson, Lawrence, and Stephenson left the bar. Outside the bar, Johnson yelled that "they had to serve some type of punishment" and that he was going to "kill him."

Next, a fourth man arrived and spoke with the three men. This man and Lawrence then walked to the vehicle that the three men had arrived in earlier. Johnson, Lawrence, and Stephenson then entered a different bar. Once inside, Lawrence discretely handed Johnson an object that was smaller than a hand, reflected the light, and glistened slightly. Johnson handed the object back to Lawrence. The three men then left the second bar, only to return to its vestibule for roughly three minutes.

[1] Because appellant and his brother share a last name, we will refer to appellant as Johnson and his brother as Lawrence.

Johnson, Lawrence, and Stephenson then returned to the first bar. Bouncers waved a wand designed to detect weapons over Lawrence, and it appeared that Stephenson and Johnson were not wanded. The three men found the victim on the dance floor.

The men surrounded the victim. Lawrence and Stephenson attacked the victim and pushed him into Johnson. Johnson grabbed the victim with his left hand and made a series of jabbing motions with his right hand. Stephenson also made a series of underhanded jabbing motions at the victim. Johnson separated from the fight and appeared to be touching his jacket as he walked back toward the fight. Johnson reengaged and kicked and stomped on the victim repeatedly. Bouncers moved the four men toward the stairs, and Stephenson punched the victim, knocking him down the stairs. The victim stumbled down the stairs out of the front door and collapsed onto the sidewalk. Blood pooled around him.

Johnson exited the bar, looked down at the victim lying on the sidewalk, and kicked him in the head. Stephenson exited the bar next and attempted to kick the victim in the head, but he missed and stumbled. Lawrence exited the bar last and stepped over the victim, who was being tended to by a bouncer. Johnson, Stephenson, and Lawrence jogged away from the bar. Law enforcement located Johnson's jacket soon after the incident at Johnson's girlfriend's house; the sleeves were wet as though they had recently been washed.

The victim was transported to a hospital where he was pronounced dead after resuscitation efforts were unsuccessful. The cause of death was excessive bleeding from sharp-force injuries, and the manner of death was homicide. The victim had six stab wounds—two to his chest, three to his back, and one to his arm.

Johnson was charged with two counts of second-degree murder under an accomplice-liability theory. He waived his right to a jury trial. After a court trial, the district court found Johnson guilty on both counts[2] but entered a conviction on only count 1. The district court sentenced Johnson to 480 months in prison. This appeal followed.

DECISION

Johnson argues that the evidence is insufficient to support his conviction. "When reviewing a claim of evidentiary insufficiency, we view the evidence in the light most favorable to the verdict and assume that the factfinder disbelieved any testimony conflicting with that verdict." *State v. Leake*, 699 N.W.2d 312, 319 (Minn. 2005). "We carefully examine the record to determine whether the facts and the legitimate inferences drawn from them would permit the [factfinder] to reasonably conclude that the defendant was guilty beyond a reasonable doubt . . . ." *State v. Waiters*, 929 N.W.2d 895, 900 (Minn. 2019) (quotation omitted). If the state uses circumstantial evidence to prove an element of the offense, we apply a heightened standard of review. *State v. Porte*, 832 N.W.2d 303, 309 (Minn. App. 2013). Circumstantial evidence is "evidence from which the factfinder

[2] The district court found that an aggravating factor applied to both counts because Johnson committed the crime as a part of a group of three or more. *See* Minn. Sent. Guidelines 2.D.3.b.(10).

can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted).

We review the sufficiency of circumstantial evidence by conducting a two-step analysis. *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019). First, we identify the circumstances proved by the state. *State v. Silvernail*, 831 N.W.2d 594, 598 (Minn. 2013). We "assume that the [fact-finder] resolved any factual disputes in a manner that is consistent" with the verdict. *State v. Moore*, 846 N.W.2d 83, 88 (Minn. 2014). Second, we "determine whether the circumstances proved are consistent with guilt and inconsistent with any rational hypothesis other than guilt." *Loving v. State*, 891 N.W.2d 638, 643 (Minn. 2017) (quotation omitted). We do not defer to the fact-finder's choice between reasonable inferences. *Silvernail*, 831 N.W.2d at 599. We must reverse the conviction if a reasonable inference other than guilt exists. *Loving*, 891 N.W.2d at 643. But we will uphold the conviction if the "circumstantial evidence forms a complete chain" which leads "directly to the guilt of the defendant as to exclude beyond a reasonable doubt any reasonable inference other than guilt." *State v. Peterson*, 910 N.W.2d 1, 7 (Minn. 2018) (quotation omitted).

Here, the district court found Johnson guilty of intentional second-degree murder as an accomplice. The state was required to prove both the underlying elements of the offense and that Johnson was liable as an accomplice. Johnson disputes only the accomplice-liability theory.

"A person is criminally liable for a crime committed by another if the person intentionally aids, advises, hires, counsels, or conspires with or otherwise procures the

other to commit the crime." Minn. Stat. § 609.05, subd. 1 (2018). The state must prove that the accomplice had knowledge of the crime and intended his presence or actions to further the commission of the crime. *State v. Mahkuk*, 736 N.W.2d 675, 682 (Minn. 2007). This mental state can be proven with circumstantial evidence such as presence at the crime scene, a lack of objection or surprise under the circumstances, and flight from the crime scene. *State v. Hawes*, 801 N.W.2d 659, 668 (Minn. 2011).

We commonly refer to the person who committed the crime as the "principal" and the person who intentionally aided the principal's commission of the offense as an "accomplice." *See State v. Huber*, 877 N.W.2d 519, 524 (Minn. 2016). Yet, "aiding and abetting is not a separate substantive offense." *State v. DeVerney*, 592 N.W.2d 837, 846 (Minn. 1999). Rather, it is "a theory of criminal liability." *Dobbins v. State*, 788 N.W.2d 719, 729-30 (Minn. 2010). In other words, section 609.05 renders accomplices criminally liable as principals. *State v. Lee*, 683 N.W.2d 309, 315 (Minn. 2004). "The purpose of [section] 609.05 is clear: with accomplice liability, even if two accomplices each point the finger at the other as the truly guilty one, the state may charge and prosecute both." *State v. Atkins*, 543 N.W.2d 642, 646 (Minn. 1996). Thus, the state can charge two suspects as accomplices, though the principal is unknown.

Circumstances proved

Applying the circumstantial-evidence test, we first determine the circumstances proved. *See Silvernail*, 831 N.W.2d at 598. These circumstances proved include: (1) Johnson had motive to kill the victim from the first fight when the victim punched Johnson; (2) Johnson was overheard stating that he was going to "kill him"; (3) Johnson

helped procure a weapon; (4) Johnson's actions during the fight went beyond inflicting only bodily harm; and (5) when Johnson left the bar and saw the victim dying on the ground, he did not appear surprised or render aid; rather, he kicked the victim in the head.

The second step of our analysis requires us to consider whether these circumstances proved are consistent with Johnson's guilt and preclude any rational hypothesis inconsistent with his guilt. *See Loving*, 891 N.W.2d at 643. The state was required to prove beyond a reasonable doubt that Johnson caused "the death of a human being with intent to effect the death of that person or another, but without premeditation." *See* Minn. Stat. § 609.19, subd. 1(1) (2018). The only reasonable hypothesis from these circumstances proved is that Johnson aided and abetted the murder of the victim and intended to cause his death.

There is no reasonable interpretation of Johnson's actions other than that he intended to cause the death of the victim. Johnson physically assaulted the victim multiple times and was, at a minimum, aware that Lawrence or Stephenson had a knife that was used to kill the victim. Indeed, Johnson does not contest that he intended to cause the death of the victim—the crux of his argument on appeal is that he was *the principal* in the victim's death, rather than the accomplice. The circumstances proved do not support any reasonable hypothesis other than Johnson's guilt.

Accomplice liability

Johnson's theory that the district court erred by convicting him as an accomplice, rather than as a principal, is unavailing.

The most apposite case is *Atkins*, in which Atkins and another person, Dixon, accused the other of firing the shots that killed the victim. 543 N.W.2d at 646. The supreme court held that, under section 609.05, "regardless of who fired the fatal shots, either Atkins or Dixon could be charged and prosecuted for first-degree murder." *Id.* Minnesota courts have consistently applied this approach to accomplice liability. *See State v. Davenport*, 947 N.W.2d 251, 257 (Minn. 2020) (upholding murder conviction under aiding-and-abetting theory even when the state's theory of the case was that Davenport was the one of three assailants who shot the victim); *State v. Pendleton*, 759 N.W.2d 900, 910 (Minn. 2009) (upholding murder convictions stating that even if evidence was insufficient to prove defendant's direct involvement, "he would also be guilty under a theory of aiding and abetting").

Johnson argues that the circumstances proved are inconsistent with guilt because accomplice liability requires that he aided "a crime committed by another," and the state did not prove beyond a reasonable doubt that Johnson was not the principal. *See* Minn. Stat. § 609.05, subd. 1. But Johnson admits that no Minnesota court has ever held that one cannot be liable as a principal and an accomplice. Johnson's other arguments to the contrary are unpersuasive as well.

Johnson cites *State v. Ezeka* to argue that he cannot be convicted for the crime of another if the state did not prove beyond a reasonable doubt who specifically killed the victim. 946 N.W.2d 393, 408 (Minn. 2020), *cert. denied*, 141 S. Ct. 934 (2020). In *Ezeka*, the supreme court held that a hybrid jury instruction that combined elements of murder and accomplice liability was improper because it used confusing and misleading language to

describe accomplice liability when the state's theory at trial was that Ezeka was the principal, not an accomplice. *Id.* Johnson posits that *Ezeka* stands for the proposition that it is logically and legally inconsistent to convict someone of both committing a crime and aiding in the commission of that same crime because the two theories are mutually exclusive. But the supreme court's decision that the hybrid jury instruction was misleading does not mean that a state cannot charge someone as both a principal and an accomplice.

Johnson quarrels with the district court's use of *Dobbins* to support his conviction. Dobbins alleged that his appellate counsel was ineffective for failing to challenge Dobbins's conviction for aiding and abetting murder when the state's theory at trial was that Dobbins was the principal. 788 N.W.2d at 729-30. At trial, the state argued that Dobbins shot the victim, and in the alternative, that he orchestrated the murder. *Id.* at 729. The supreme court concluded that Dobbins's ineffective-assistance claim was meritless because accomplice liability is a theory of criminal liability, not an element of a criminal offense or separate crime. *Id.* at 729-30. Thus, the jury convicted Dobbins of first-degree murder for either committing the murder himself or aiding another in committing the murder. *Id.* at 730. Johnson argues that Dobbins's conviction was supported by direct evidence, whereas here there is only circumstantial evidence against Johnson. But circumstantial evidence is entitled to the same weight as direct evidence. *Bernhardt v. State*, 684 N.W.2d 465, 477 (Minn. 2004).

Because the jury was not required to determine whether Johnson was liable for the victim's death as a principal or as an accomplice, and because the circumstances proved

do not support any reasonable hypothesis other than Johnson's guilt, the evidence sufficiently supports his conviction.[3]

Affirmed.

[3] The state urges us to hold that the circumstances proved can be inconsistent with any rational hypothesis other than guilt for *any* crime, not just the crime charged. Because we hold that the circumstances proved are inconsistent with any rational hypothesis other than guilt for the charged crime, we decline to reach this issue.